

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Posted November 29, 2004]

**NOTICE OF CONTINUATION OF PUBLIC HEARING FOR PROPOSED
RULEMAKING**

Fuel Hazard Reduction, 2004

The Board of Forestry and Fire Protection (Board) is continuing a public hearing initially held on November 3, 2004. At the initial hearing, the Board proposed adopting the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 895.1	Definitions
§ 1052	Emergency Notice
§ 1052.1	Emergency Conditions

Adopt Permanently:

§ 1052.4	Emergency Notice for Fuel Hazard Reduction
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CONTINUATION OF PUBLIC HEARING

At the November 3, 2004 hearing, the Board received a variety of public comments including the comments on the necessity of this regulation given the recently enacted legislation under Assembly Bill (AB) 2420 which also provides regulatory relief for fuel hazard reduction. After hearing the public testimony during the November hearing, the Board decided to further evaluate and hear additional public comments on the necessity of the proposed *Fuel Hazard Reduction, 2004* regulation. Such evaluation will include

- 1) determination of legislative intent of AB 2420 through discussion with legislators involved AB 2420;
- 2) preparation of a staff report based on a field review of the ongoing fuel hazard reduction Emergency Notice projects to evaluate their hazard reduction and cost effectiveness.

The Board will hold the continuation of the initial public hearing on Thursday, January 6, 2005, starting at 9:00 a.m., at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code 11125.1, any information presented to the

Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on **Monday, January 3, 2005**. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 authorizes the Board to adopt such Rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4514.3, 4551.5, 4551.7, 4552, 4553, 4562, 4582, 4584 and 4592 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California State Board of Forestry and Fire Protection (Board) recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation. To address this situation, Board is proposing regulation necessary to provide regulatory relief for an emergency condition relating to wildfire threat and hazardous fuel conditions in the State's private timberlands. The regulation is promulgated in accordance with existing statute PRC 4592, Emergency notice; content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments and environmental protection measures related to the removal of live and dead fuel (vegetation) hazards near communities, roads and infrastructure facilities. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.4, Emergency Notice for Fuel Hazard Reduction.

The general scope of the rule is private timberlands in and ¼ mile adjacent to "communities at risk", as listed by the California Fire Alliance. Additionally, 500 feet from certain roads, permitted structures outside of the community areas, infrastructure facilities, and approved fire suppression ridges are included for treatment. The primary target groups are small timberland owners, who often have the least means and capability to complete fuel reduction projects.

The general goal is reduction of the vertical and horizontal continuity of fuels by using vegetative manipulation methods that modify surface fuels, remove ladder fuels, and (to a lesser extent) thin the overstory canopy.

Regulation Purpose and Necessity

14 CCR § 895.1 Definitions

SPECIFIC PURPOSE OF THE REGULATION

The California Forest Practice Rules commonly utilize definitions of technical terms in the regulation text that are generally recognized by federal and state agencies, as well as the forest products industry representatives. However, the Forest Practice Rules under 14 CCR § 895.1 (Definitions) do not include a comprehensive listing of applicable definitions for proposed for use in the regulation. Definitions are being added to allow for new terms and provide brevity and clarity in the proposed rule.

14 CCR § 1052 Emergency Notice

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this section of the proposed regulation is to list the Department form that will be used by those submitting a request to implement the proposed regulation and amend the conditions required for archaeological review.

14 CCR § 1052 specifies Form RM 65 (1052.4)(6/04) shall be used when submitting request to operate under an emergency notice for fuel hazard reduction.

14 CCR § 1052 (10)(A) states a person conducting archaeological review shall be certified pursuant to 14 CCR 929.4 (949.4, 969.4).

14 CCR § 1052.1 Emergency Condition

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this section of the proposed regulation is to add an additional description of what constitutes an emergency condition as declared by the Board under its authority stated in PRC4592. This subsection is needed to describe the nature of the emergency pursuant to 895.1 definition of emergency, so those filing an emergency notice can refer to this condition as the basis of conducting their operation.

14 CCR § 1052.4 Emergency Notice for Fuel Hazard Reduction

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this section of the proposed regulation is to describe the location, vegetative treatments, documentation requirements and protective requirements for those filing a Notice of Emergency Timber Operation Fuel Hazard Reduction which was authorized under the proposed amendment in 14CCR 1052.

14 CCR § 1052.4 (a) describes the documentation and field requirements an RPF must develop and apply. These include pre and post harvest stand structure analysis [§ 1052.4 (a) (1)]; criteria used to designate trees [§ 1052.4 (a) (2)]; designation methods [§ 1052.4 (a) (3)]; and post harvest compliance methodology [§ 1052.4 (a) (4)]. Post harvest compliance to the regulations relates to physical measurement, observations and comparison to a photo series depicting desired end results.

14 CCR § 1052.4(b) describes the operational limitation conformance. Such limitations have been previously listed in 1038 (b) and (f) and are commonly recognized and used.

14 CCR § 1052.4 (c) describes the geographic locations where operation are permitted. The specific locations include within ¼ mile legal structures within or adjacent to a community listed in the "California Fire Alliance list of Communities at Risk" [§ 1052.4 (c)(1)] (see attachment for list of communities or refer to web site listed in regulation); 500 feet of a legal structures outside the area defined in § 1052.4(c)(1); 500 feet of either side of a public or federal road [§ 1052.4 (c)(3)]; 500 feet on either side of a private road providing access to legal structures[§ 1052.4 (c)(4)]; 500 feet on either side of a mainline haul road identified by a public fire agency as necessary for fire suppression or evacuation and is approved by a public fire agency in a fire prevention plan[§ 1052.4 (c)(5)]; 500 feet on either side of ridges identified by a public fire agency as suitable for fire suppression and is approved by a public fire agency in a fire prevention plan[§ 1052.4 (c)(6)] ; or within 500 feet of infrastructure facilities such [§ 1052.4 (c)(6)].

14 CCR § 1052.4 (d) describes the vegetative treatments permitted under the emergency notice. The treatments must target smaller trees and leave large trees as measured by increasing the quadratic mean diameter [§ 1052.4 (d)(1)]; be limited to trees less than 30 inches stump diameters[§ 1052.4 (d)(2)]; have minimum post harvest canopy closure requirements that vary by forest type[§ 1052.4 (d)(3)]; meet commercial thinning requirement of 14 CCR § 913.3 [933.3, 953.3] immediately upon completion of operations[§ 1052.4 (d)(4)]; removed to achieve a minimum clearance distance of 8 feet measured from the base of the live crown of the post harvest dominant and codominant trees to the top of the surface fuels[§ 1052.4 (d)(5)]; treat surface fuels to achieve the goal of an average of 4 foot maximum flame length height under average severe fire weather conditions[§ 1052.4 (d)(6)].

14 CCR § 1052.4 (e) specifies the wildlife habitat protection requirements to be implemented in the project.

14 CCR § 1052.4 (f) establishes a sunset date for the regulation of December 31, 2008. The regulation would terminate on this date and the Board would have to adopt an amendment to extend this date to continue the regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. Small businesses should benefit from the reduction in regulatory requirements resulting from filing of an Emergency Notice instead of a Timber Harvest Plan for conducting operations under this regulation.
- Significant effect on housing costs: None are known.

- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, Chief Environmental Protection and Regulation, Department of Forestry and Fire Protection, at the above address and phone number (916) 653 -5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using the following styles is also available from the contact person named in this notice:

- 1) language existing before 9/3/04 is shown in PLAIN TEXT,
- 2) language being proposed as either an amendment or new section is DOUBLE-SPACED AND SINGLE UNDERLINED,

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) Requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

File: Fuel Haz-2004-45day-11_16_04 Cont. Hearing Date